

October 22, 2010

Mr. Shawn Ghose, EPA Project Coordinator  
Superfund AR/LA Enforcement Section (6FF-RA)  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202

**Subject: Deed Restriction**  
**Arkwood Site, Omaha, Arkansas**

Dear Mr. Ghose:

On August 30, 2010, a Deed Notice (copy attached) was filed for the Arkwood Site by the owner's representative, C.C. Grisham. However, the Deed Notice is inaccurate and incomplete.

First, the property metes and bounds description contains numerous errors. Second, the Deed Notice is incomplete because it fails to inform future owners of the residual contamination present at onsite, the requirement for inspection and maintenance of the site, and the need to provide protectiveness certifications. These errors and the incomplete nature of the Deed Notice are described in more detail below.

McKesson had prepared a Deed Restriction (copy attached) previously that accurately described the burdened property and was otherwise complete, and requested that Mr. Grisham record it. Mr. Grisham recorded the Deed Notice instead. Since Mr. Grisham failed to record the Deed Restriction, we request that EPA direct him to record the Deed Restriction to ensure that the Arkwood remedy requirements, designed to protect human health and the environment, are known to and complied with by all future owners of the property.

A Settlement Agreement and a Site Agreement were entered into previously between Mass Merchandisers (MASS), Inc., McKesson Corporation (McKesson) (collectively MMI) and the Ormond Group regarding the Arkwood Site. Consistent with Section 10.3(b) of the Settlement Agreement, we attach a copy of the agreements for your reference. In Section 7.2 of the Settlement Agreement, the Ormond Group assigns to MASS any easements or rights of entry it may have in connection with the Site. In Section 9.2(b) and (c) of the Settlement Agreement, the Ormond Group agrees to cooperate with MMI by not conferring with regulatory agencies without MMI's prior written consent and by providing assistance requested by MMI in connection with the Site, respectively. In the Site Agreement, Recital B.1 states that while environmental investigation, cleanup, post-cleanup monitoring, or any other regulatory requirement remains in connection with the Site, the Ormond Group will (d) permit MASS to direct in its sole discretion the

course of any investigation or cleanup MASS deems appropriate or which is required and (e) not sell, assign, lease or otherwise convey, or cause to be conveyed, any Site property interests without MASS's prior written consent and (f) otherwise give MASS unconditional and unrestricted access for any purpose whatsoever.

Consistent with these terms, McKesson requests that EPA direct that the Deed Restriction prepared by McKesson be filed on record in Boone County, AR by Mr. Grisham. The reason for this request is that the recorded Deed Notice is inaccurate and incomplete as specified below:

- 1) The property survey description in the Deed Notice contains numerous errors. A copy of the Deed Notice property survey description with errors noted in the margins and a copy of the surveyed property description are attached for reference;
- 2) The Deed Notice fails to include any reference to the nature of the residual soil contamination at the Site. Residual soil contamination is described in Section 3 of the Deed Restriction. Inclusion of this section is necessary because the Site was cleaned to industrial standards established at the time of the Record of Decision (ROD). Contamination remains at the Site at the industrial levels established in 1990. It is important to note that the current standards are more stringent than ROD levels, increasing the importance of maintaining the Site cap and engineering controls;
- 3) The Deed Notice fails to include an adequate description of the engineering controls mandated for the Site. These controls are described in Section 4 of the Deed Restriction and include maintaining the Site in a fenced and secure manner, maintaining the topsoil and grass cover, maintaining the storm water system, and providing routine inspection and maintenance for at least 30 years following completion of the remediation per the ROD (a copy of the pertinent portion of Section XI. of the Selected Remedy is attached); and
- 4) The Deed Notice fails to include a description of the monitoring and maintenance of the engineering controls and protectiveness certification. These issues are described in Section 6 of the Deed Restriction. Engineering controls survive any delisting of the Site.

We look forward to discussing these issues in more detail during our upcoming conference call. McKesson appreciates, in advance, any assistance the EPA can provide in ensuring that an appropriate deed restriction is recorded for the Arkwood Site.

Sincerely,

Jean Mescher  
Project Coordinator

Attachments (6)

cc: John Edgcomb  
Don Smith

bc: Frank Robinson  
Carole Ungvarsky